

citizenship of an independent sovereign nation (Román 2006, 49).

SEE ALSO *Citizenship; Immigration Policy, History of; Naturalization; Territorial Government.*

#### BIBLIOGRAPHY

- Rivera Ramos, Efrén. *The Legal Construction of Identity: The Judicial and Social Legacy of American Colonialism in Puerto Rico*. Washington, DC: American Psychological Association, 2001.
- Román, Ediberto. *The Other American Colonies: An International and Constitutional Law Examination of the United States' Nineteenth and Twentieth Century Island Conquests*. Durham, NC: Carolina Academic Press, 2006.

*Ediberto Román*

*Florida International University College of Law*

## U.S. TERM LIMITS V. THORNTON

*U.S. Term Limits v. Thornton*, 514 U.S. 779 (1995), ended congressional term limitations adopted by nearly half of the states, and in the process reexamined the nature of Congress as the national legislature, the federal union, and the priority of the states in determining the qualifications of its members. A divided Court rejected claims of individual state prerogative, instead determining that the Constitution created a uniform national legislature representing the American people.

#### BACKGROUND

The US president and thirty-six of the fifty state governors are subject to term limitations, restrictions on the number of terms that a person may serve in a political office. Between 1990 and 2000, twenty-three states adopted term limitations for the congressional offices of US senator and representative, almost exclusively by citizen initiatives.

In 1992 Arkansas's citizens passed Amendment 73, the Term Limitation Amendment, which amended the state constitution to render an otherwise eligible candidate ineligible to appear on the ballot for congressional office based on the number of terms already served. In separate suits, Bobbie Hill and Ray Thornton, members of the Arkansas congressional delegation, challenged the term limitations on federal political offices, arguing that the Arkansas law violated the elections clause of the US Constitution that laid out the qualifications for Congress. The Arkansas State Supreme Court agreed with the plaintiffs. An organization called US Term Limits, which supports legislative term limitations, appealed the decision to the US Supreme Court, arguing that, given Arkansas's Tenth Amendment

rights, the amendment should stand. On appeal, the US Supreme Court affirmed the state court's opinion, striking down federal term limitations throughout the country.

The primary constitutional question pertained to the states' power to extend the qualifications for US Congress as described in Article I, Sections 2 and 3 of the US Constitution. Do states, via their Tenth Amendment reserved powers, retain the right to alter the qualifications for US Congress within their states? Can they do so by indirect means, such as ballot access restrictions? In a 5–4 decision, the Court answered “no” to both questions. It held that states, acting individually, may not alter the constitutional qualifications for federal office, nor may they do so by indirect means. Any alteration must be by federal constitutional amendment.

#### MAJORITY AND DISSENTING ARGUMENTS

Justice John Paul Stevens wrote the opinion of the Court, joined by Justices David Souter, Ruth Bader Ginsburg, and Stephen Breyer, and with a concurring opinion by Justice Anthony Kennedy. Stevens invoked *Powell v. McCormack*, 395 U.S. 486 (1969), in which Congress attempted to exclude an elected member from taking his seat. The Court determined that the Constitution's Article I qualifications for Congress are exclusive and cannot be extended by Congress. In *U.S. Term Limits* Stevens argued that the states also lack that authority. Citing *Storer v. Brown*, 415 U.S. 724 (1974), Stevens pointed out that the elections clause—the Article I, Section 4 delegation to the states to specify the manner of holding elections—gave the states the authority to regulate the *procedures* for carrying out an election but not to alter the qualifications for office. Stevens rejected the petitioners' argument that a ballot access restriction did not disqualify candidates as they could be elected by means of a write-in campaign, arguing that the “sole purpose” of the state's amendment was to disqualify candidates.

The petitioners also argued that the states retain the right to adjust qualifications under the reserved powers clause. The challenge questioned the essential nature of the Congress as a representative body: was it a “confederation of nations” represented by appointed delegates or a body representative of a single nation? The Court affirmed the latter position, and noted that the Seventeenth Amendment (providing for the direct election of US senators) extended that position to the US Senate. “The Constitution thus creates a uniform national body representing the interests of a single people” (514 U.S. at 822). If states altered the qualifications within their own borders, it would create a “patchwork of state qualifications” inconsistent with the Framers' vision of uniformity (514 U.S. at 807). Regarding the application of the states' Tenth Amendment reserved powers, the Court

argued that the states could reserve only those powers held prior to the formation of the Union.

Kennedy's concurring opinion underscored the importance of the republican nature of the Union. "Framers split the atom of sovereignty[,] . . . establishing two orders of government"—"one state and one federal"—"each with its own direct relationship" to the people (514 U.S. at 838). The independence of each to the other, and the federal government's obligation to represent the national public, required that the states not interfere with Congress's national character.

Justice Clarence Thomas's dissent, signed also by Justices William Rehnquist, Sandra Day O'Connor, and Antonin Scalia, proposed a confederal model of the Union. "The ultimate source of the Constitution's authority is the consent of the people of each individual State, not the consent of the undifferentiated people of the Nation as a whole" (514 U.S. at 846). Interpreting the reserved powers clause, Thomas argued that the Constitution endowed the federal and state governments with different "default" rules: Congress has the powers granted to it within the Constitution, and the states have all powers not granted to Congress or withheld from them. Where the Constitution is silent, the states have authority. Finding no express prohibition within the Constitution, nor a necessary implication, the states are empowered to alter the qualifications for federal office.

## IMPLICATIONS

The Court's opinion affirmed the idea of Congress as a uniform national legislature representing the people. In so doing, it also affirmed the uniformity of the qualifications of members of Congress and how those qualifications are set. The implications of the Court's opinion touch not only federalism but legislative representation in the American federal system. "The fundamental principle of our representative democracy," wrote Stevens, invoking *Powell*, "is that the people should choose whom they please to govern them," and that this right belongs not to the states but to them.

In underscoring the states' authority to determine the procedure for holding elections, *U.S. Term Limits v. Thornton* has been invoked to justify registration rules and voter identification laws. Its discussion of the independence of state and federal governments, particularly the dual sovereignty model laid out in Justice Kennedy's concurrence, is often used in arguments both for and against states' rights and to defy attempts by states to give voting instructions to members of Congress. Legal conflict is nearly inevitable under the dual sovereignty model, and the Court has continued to struggle with defining states' authority under the Tenth Amendment. The case has also been used to justify unequal reallocation of federal tax dollars across the states. For example, states that decline

to participate in the federal Medicaid program do not create a constitutional problem, even as their residents contribute to the program through their federal tax dollars.

In the same year that the Court heard this case, the Republican Party proposed a reformist platform, the "Contract with America," that included a promise to propose a constitutional amendment establishing federal term limitations, but the effort failed. Despite the continuing popularity of federal term limits—a 2013 Gallup poll suggests that 75 percent of respondents would support a constitutional amendment to limit congressional terms—the movement has stalled. The questions raised by *U.S. Term Limits v. Thornton* regarding the interpretation of the reserved powers clause remains controversial.

**SEE ALSO** *Article I, United States Constitution; Congress as a Governing Institution; Federalism, Theory of; Federalism in American History; Regulation of Federal Elections; Representation: Idea of; Voting Rights, Constitutional.*

## BIBLIOGRAPHY

- Carey, John M., Richard G. Niemi, and Lynda W. Powell. *Term Limits in the State Legislatures*. Ann Arbor: University of Michigan Press, 2000.
- Carey, John M., Richard G. Niemi, Lynda W. Powell, and Gary F. Moncrief. "The Effects of Term Limits on State Legislatures: A New Survey of the 50 States." *Legislative Studies Quarterly* 31, no. 1 (2006): 105–34.
- Garrett, Elizabeth. "Term Limitations and the Myth of the Citizen-Legislator." *Cornell Law Review* 81 (1996): 623–695.
- Kousser, Thad. *Term Limits and the Dismantling of State Legislative Professionalism*. Cambridge, UK, and New York: Cambridge University Press, 2005.
- Sullivan, Kathleen M. "Dueling Sovereignties: *U.S. Term Limits, Inc. v. Thornton*." *Harvard Law Review* 109 (1995): 78–109.

**Jenna Bednar**  
*University of Michigan*

## UTOPIAN COMMUNITIES

Americans value idealism and pragmatism, but in balance, rarely separately. As a result, utopianism has not found its way into the mainstream of American thinking about governance. For example, *The American Heritage Dictionary* emphatically defines "utopian" as "[e]xcellent or ideal but existing *only* in visionary or impractical thought or theory" (emphasis added).

Little wonder that examples of utopia in America are confined to relatively small communities. Yet, there have been periods in which these communities flourished. Between 1740 and 1900, utopian visionaries created several hundred communities in the United States. Often